

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

APPEAL FROM ORDER NO.181 OF 2004
IN
NOTICE OF MOTION NO.5615 OF 2000
IN
B.C.C.C. L.C. SUIT NO.6708 OF 2000

Suresh Malani & Anr. ... Appellants

V/s.

M/s.Jay Cee Enterprises & Ors. ... Respondents

Mr.A.C. Singh for Appellants
Mr.Denzil D'mello for Respondent Nos.1 to 5
Mr.Rego i/b N.J. D'monite for Respondent No.6

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **NOVEMBER 24, 2004**

P.C.:

. This Appeal from Order has been filed against the order in the Notice of Motion refusing to grant the interim relief. The Plaintiff claims to be a flat purchaser and is aggrieved by the action of Defendant No.6 who is proposing to construct a garage on the suit plot. It appears that the permission to construct such a garage was obtained from the Mumbai Municipal Corporation on 16.7.1997 which was renewed for a further period of one year. Thereafter, in the year 2000 again, Defendant No.6 obtained permission for construction of the garage. However, as of today, although the request is being processed by the Municipal Corporation, there

is no permission granted in favour of Defendant No.6 for construction of the garage as yet. The Tree Authority, however, has sanctioned cutting of a tree on the suit plot to accommodate the proposed garage.

2. The trial Court while deciding the Motion has held that the garage may be constructed only after the necessary sanctions are obtained. However, it is made clear that as and when such permission is obtained by Defendant No.6, Defendant No.6 will give a copy of the same to the Plaintiff and will not construct the garage for a period of four weeks after obtaining the sanction.

3. The trial Court has observed that the Plaintiff could not file the suit since there was no conveyance in his favour. This observation, obviously, is prima facie and may be considered at length when the suit comes up for hearing.

4. In the event the Plaintiff challenges the sanction accorded for constructing the garage, the Court would consider the same uninfluenced by the observations made by the trial Court in this Notice of Motion.

5. Appeal from Order stands disposed of. Civil Application No.241 of 2004 is disposed of as infructuous.